

1 ORRICK, HERRINGTON & SUTCLIFFE LLP  
KAREN G. JOHNSON-MCKEWAN (SBN 121570)  
2 kjohnson-mckewan@orrick.com  
ANNETTE L. HURST (SBN 148738)  
3 ahurst@orrick.com  
GABRIEL M. RAMSEY (SBN 209218)  
4 gramsey@orrick.com  
405 Howard Street, San Francisco, CA 94105  
5 Tel: 1.415.773.5700 / Fax: 1.415.773.5759  
PETER A. BICKS (*pro hac vice*)  
6 pbicks@orrick.com  
LISA T. SIMPSON (*pro hac vice*)  
7 lsimpson@orrick.com  
51 West 52<sup>nd</sup> Street, New York, NY 10019  
8 Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9 BOIES, SCHILLER & FLEXNER LLP  
DAVID BOIES (*pro hac vice*)  
10 dboies@bsflp.com  
333 Main Street, Armonk, NY 10504  
11 Tel: 1.914.749.8200 / Fax: 1.914.749.8300  
STEVEN C. HOLTZMAN (SBN 144177)  
12 sholtzman@bsflp.com  
1999 Harrison St., Ste. 900, Oakland, CA 94612  
13 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION  
DORIAN DALEY (SBN 129049)  
dorian.daley@oracle.com  
15 DEBORAH K. MILLER (SBN 95527)  
deborah.miller@oracle.com  
16 MATTHEW M. SARBORARIA (SBN 211600)  
matthew.sarboraria@oracle.com  
17 RUCHIKA AGRAWAL (SBN 246058)  
ruchika.agrawal@oracle.com  
18 500 Oracle Parkway,  
Redwood City, CA 94065  
19 Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.  
25 Plaintiff,  
26 v.  
GOOGLE INC.  
27 Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER GRANTING  
ORACLE'S MOTION IN LIMINE #4  
REGARDING GOOGLE'S DAMAGES  
EXPERT, DR. LEONARD**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William H. Alsup

[PROPOSED] ORDER GRANTING ORACLE'S  
MOTION IN LIMINE #4 REGARDING GOOGLE'S  
DAMAGES EXPERT, DR. LEONARD

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #4  
2 Regarding Google's Damages Expert, Dr. Leonard, and any Opposition thereto and Reply in  
3 support thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS  
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Portions of Dr. Leonard's analysis, opinions, and conclusions are stricken and his  
7 testimony on those matters excluded under Federal Rules of Evidence 402, 403, 702, 703, and  
8 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny because they  
9 are legally irrelevant, erroneous, unreliable, prejudicial, based on flawed methodology, and (in  
10 some instances) rely on information and estimates of information that Google refused to produce  
11 in discovery.

12 Specifically, Dr. Leonard's analysis, opinions, conclusions, and testimony regarding the  
13 causal nexus and apportionment elements of infringer's profits (disgorgement) are excluded in  
14 their entirety. Dr. Leonard's causal nexus and "bottom up" apportionment opinions as well as  
15 portions of his expense deductions opinions are based on counterfactual non-infringing  
16 alternatives that are legally irrelevant and prejudicial. Dr. Leonard's "bottom up" apportionment  
17 analyses are independently excluded as unreliable, prejudicial, and premised on information and  
18 estimates of information that Google refused to produce in discovery.

19 Dr. Leonard's "top down" apportionment approaches (the line-per-line valuations) are  
20 excluded as legally irrelevant, unreliable, and based on technical information for which Dr.  
21 Leonard is not qualified to opine.

22 Finally, Dr. Leonard's deduction for traffic acquisition costs ("TAC") is excluded is  
23 irrelevant, erroneous, and unreliable.

24 IT IS SO ORDERED.

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26  
27 THE HONORABLE WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE